

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 735 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B.K.RATHOD & ORS.

Versus

STATE OF GUJARAT AND ANR.

Appearance:

MR PV HATHI for Petitioners

MR NN PANDYA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioners, working as Watchers in the Drugs Control Administration, Government of Gujarat, filed this Special Civil Application before this Court, in which prayer has been made as under:

(A) to allow this petition with costs;

(B) to direct the respondents Nos.1 and 2 to revise the pay-scale and allowances including the benefit of selection grade of the Watchers keeping in view the benefits of revision and such other matters given to similarly situated employees referred to above and to extend the said benefit to the petitioners with effect from 1.1.1973;

(C) to direct the respondents to accept the recommendations of the Second Pay Commission of payment of Special pay and of bringing the cadre of Watchers in the common cadre of Junior Clerks as recommended and to give effect to these benefits on and with effect from 1.1.1973;

(D) to direct the respondents to pay to the petitioners the amount payable to them as a consequence of grant of the above said reliefs within a time specified by this Hon'ble Court;

(E) to pass such other order or orders as may be deemed necessary in the circumstances of the case may require;

2. The Second Pay Commission on the representation made by the petitioners and other persons was impressed with the said representation and therefore made three recommendations in their favour which are as under:

(i) That the pay-scales of Watchers should be Rs.260-400.

(ii) The said posts should be brought on the cadre of Junior Clerks.

(iii) That they should be given Rs.25/- in addition to their salary as special pay.

3. Out of these three recommendations, the State Government has accepted recommendation No.1 and the pay-scale of Watchers has been revised to Rs.260-400, but the other two recommendations were not accepted. This writ petition has come up for consideration by this Court on 19th March 1982. During the course of hearing, the counsel who was appearing for the respondents made a statement that the second recommendation made by the Second Pay Commission is under active consideration of the Government. So far as the third recommendation is concerned, the learned counsel for the respondents made as statement that the government has not agreed to accept

this recommendation. The directions were given by this Court by way of interim relief that they may decide about the recommendation No.2 latest by 30th April 1982, and in case the State Government decides not to accept the recommendation, they must do so by a reasoned order. It has further been directed that if no reasons have been assigned for not accepting recommendation No.3, the State Government should make a fresh order assigning as to what are the reasons which weighed with the State Government in deciding not to accept the recommendation No.3 which the Second Pay Commission has made and a reasoned order was directed to be made. In pursuance of the aforesaid order of this Court, the State Government has decided the matter under its order dated 25th April 1982, copy of which has been submitted alongwith the reply of respondent. In annexure 'A', filed to the reply of respondent, the State Government has given reason for non acceptance of recommendation No.2, which reads as under:

"Recommendation No.II: The duties and responsibilities of clerks and watchers are different. The mode of recruitment of clerks and watchers are also different. The recruitment of clerks are made under the centralised Recruitment scheme by taking competitive examinations, whereas the recruitment of watchers are made directly through the Employment Exchange. The seniority list of clerks is maintained separately. Therefore it is not feasible to promote the watchers to the post of senior clerks by bringing the post of watchers on the cadre of junior clerk."

Regarding non acceptance of recommendation No.3,

the State Government has given reasons as under:

"Recommendation No.3: The Government has already accepted the recommendation No.1 of the 2nd Pay Commission in respect of higher pay scales to the watchers. Accordingly Government has given the pay scale of the post of clerk to the watchers. In view of this Government has decided not to accept recommendation of special pay."

4. I have considered the reasons which have been given by respondent for non acceptance of recommendations No.2 and 3. First I will take the order regarding non acceptance of recommendation No.2 of the Second Pay Commission for the petitioners. The posts of Clerks and

Watchers are two different posts. The respondent has given reason that duties and responsibilities of Clerks and Watchers are different. The mode of recruitment of Clerks and Watchers are also different. Recruitment to the post of Clerks are made under the centralized recruitment scheme by taking competitive examination, whereas the recruitment of Watchers are made directly through the Employment Exchange. Another reason has been given that the seniority list of Clerks is maintained separately. After giving those reasons, the State Government has concluded that it is not feasible to promote the Watchers to the post of senior Clerks by bringing the post of Watchers on the cadre of junior Clerks. The reasons which have been given by respondent not to bring the post of Watchers in the cadre of junior Clerks is just and reasonable. These are two posts of different cadres and merely because the pay scale of the posts are same, the post of Watchers cannot be brought on the cadre of junior Clerks. The learned counsel for the petitioner does not dispute that the duties and responsibilities of the Clerks and Watchers are different. Regarding other grounds given by respondent No.2 for non acceptance of the recommendation No.2, the learned counsel for the petitioners has not made any dispute thereof also. During the course of argument also, the learned counsel for the petitioners is unable to make out any case for bringing in cadre of junior Clerks, the post of Watchers. Leaving apart the reasons which have been given by the respondent not to accept the second recommendation of the Second Pay Commission for the petitioners, it is a case of creation of post of Watchers in the cadre of junior Clerks by abolition of the later post. Creation or abolition of post is prerogative of Executive. It is the Executive, who has to decide which posts are to be kept in one cadre. No writ of Mandamus can be issued by this Court merely because the petitioners have no channel of promotion from the cadre of Watchers. I do not find any illegality in the decision which has been taken by the respondent not to accept the second recommendation of the Second Pay Commission for the petitioners. Moreover, from the reply to this Special Civil Application it comes out that the Government has created two posts of senior Informer since July 1987, which is a post of pay scale of senior Clerk. Yet, there is another fact which has to be taken into consideration while considering the question of merger of cadre of Watchers to the cadre of junior Clerks. In the year 1991, the State Government has taken into consideration stagnation of the employees in the pay scales in which they are working, by introducing a scheme of giving pay scale of higher post in the channel of

promotion on completion of service of 9 years, 18 years, and 27 years. Even if it is taken to be a case of isolated posts from which there is no channel of promotion provided, not the petitioners will get the benefit of next higher pay scale on completion of 9 years' service, further higher pay scale on completion of 18 years and lastly the third higher pay scale on completion of 27 years' of service. In view of these facts also, it cannot be said that any prejudice will be caused to the petitioners in case the post of Watchers are not brought in the cadre of junior Clerks. For the post of Watchers, channel of promotion has been provided and apart from this, taking into consideration the fact that the scheme has been introduced of giving benefits of higher pay scale on completion of particular period of service, it takes care of this grievance of the petitioners in this Special Civil Application.

5. Now, I will consider the reasons which have been given by the respondent for not accepting recommendation No.3 of the Second Pay Commission. The Government has given reason regarding not giving special pay to the petitioners, that the Watchers have been given pay scale of the post of Clerk. It is true that the recommendation made by the Second Pay Commission are not binding on the Government, but at the same time in case the decision of the respondent not to accept the recommendation is arbitrary or capricious, then this Court can certainly interfere in the matter. The learned counsel for the petitioners, by making a reference to the Revised Pay Scales Rules 1975, contended that in Drugs Control Administration, Drugs Inspector (Intelligence Branch), Senior Drugs Inspector (Intelligence Branch) and Assistant Director (Intelligence Branch), were ordered to be given special pay. So far as the Watchers are concerned, even though they are also working in the Drugs Control Administration, special pay was not given to them, which is arbitrary. It is true that the post of Drugs Inspector and Senior Drugs Inspector are higher posts, but looking to the nature of duties which are to be discharged by Watchers, I find sufficient merits in the contention of the learned counsel for the petitioners that the denial of special pay to this class of persons is not reasonable. While taking into consideration the question of acceptance or non acceptance of recommendation No.3 of the Second Pay Commission regarding giving of special pay to the Watchers, the respondent has not considered the nature of duties which are discharged by the petitioners, the fact that the petitioners are also working in the Drugs Control Administration and lastly that they are also required to

7. A look at the above tabular form gives out that the minimum pay scale of the post of Watchers was higher than the minimum pay scale of the post of Junior Clerk in the year 1961. In the year 1969, slight verification has been made and the minimum pay scale of the post of Junior Clerk was made higher than the minimum pay scale of the post of Watcher. In the year 1975, pay scale of both the posts was brought at same level. In view of this fact, it cannot be said that merely because of pay scale of the petitioners-Watchers has been brought at par with the pay scale of Junior Clerks, it is a sufficient ground for denial or non acceptance of recommendations of the Second Pay Commission regarding giving of special pay to the Watchers. By giving this reason, the respondent has altogether ignored an important fact that initially minimum of pay scale of the post of Watchers was higher than that of Junior Clerks. It is further necessary to mention here that the initial start of pay in the year 1961 of the Watchers was Rs.100/- whereas that of Junior Clerks was Rs.91/-. In the year 1969, initial start of pay of watchers was Rs.125/- whereas that of Junior Clerks was Rs.130/-. The change is not that much as it was there in the year 1961 in between these two posts. The learned counsel for the respondent is unable to satisfy this Court how only on the ground that the pay scale of the petitioners and that of Junior Clerks has been brought at the same level, the recommendation No.3 of the Second Pay Commission, has rightly not been accepted by the respondent.

8. Taking into consideration totality of the facts of the case, I am satisfied that the reason which has been given for non acceptance of recommendation No.3 of the Second Pay Commission is not fair, just and reasonable. The learned counsel for the petitioners though made a contention that this Court may give a direction to the respondents to give the petitioners, special pay from 1.1.1973, in case the reason given for non acceptance of the recommendation of the Second Pay Commission in this respect is not accepted by this Court, but I do not find any justification in this contention. The matter has to be considered by the respondent taking into consideration all the relevant factors and pass appropriate orders.

9. In the result, this writ petition is disposed of with a direction to the respondent to consider afresh the question of acceptance or non acceptance of recommendation No.3 of the Second Pay Commission regarding giving of special pay to the Watchers in the department, after taking into consideration all the

relevant factors, including the observations made by this Court. This exercise may be undertaken within a period of four months from the date of receipt of certified copy of this order. In case this recommendation is accepted, the petitioners should be given all the consequential benefits following therefrom. The rest of the claims of the petitioners are rejected. Rule is made absolute in the aforesaid terms with no order as to costs.

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(sunil)